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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/537,210	06/03/2005	Philip Howse	BOUL/0015	1866
26290 7590 02/02/2009 PATTERSON & SHERIDAN, I.L.P. 3040 POST OAK BOULEVARD SUITE 1500 HOUSTON, TX 77056				
EXAMINER				
PURDY, KYLE A				
ART UNIT		PAPER NUMBER		
1611				
MAIL DATE		DELIVERY MODE		
02/02/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/537,210

Applicant(s)

HOWSE ET AL.

Examiner

Kyle Purdy

Art Unit

1611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date 1 page (06/03/2005)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Status of Application

1. Claims 1-20 are pending and claims 1-20 are presented for examination on the merits. The following rejections are made.

Priority

2. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 1-4 and 6-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Howse et al. (WO 00/01236, published 01/13/2000; of record, see IDS, reference provided by Examiner) in view of Salini et al. (American J. Roentgenology, 1988, 150(4), 735-743).

6. Howse is directed to a method and apparatus for controlling pests. The method requires exposing the pests to particles coated with a behavior modifying compound or a pesticide coated onto a magnetic particle (see abstract; see instant claims 1 and 3). Exemplified magnetic materials include soft ferromagnetic materials such as iron, nickel and cobalt (see page 3; see instant claim 2). Pesticides include any compound that can be used to control agricultural, natural or domestic pests such as insects. Exemplified pesticides include naturally occurring and synthetic insecticides, fungicides, acaricides, insect growth regulators and chemosterilants, entomopathogens such as bacteria, viruses and fungi. Behavior modifying compounds include pheromones, allomones, kairomones, and food odors (see page 7; see instant claims 7-9, 14-17, 19 and 20). The particles are to contain at least 0.1% of the behavior modifying compound or pesticide (see page 6; see instant claim 10-12). The size of the particles range from 2-100 microns (see page 4; see instant claims 6 and 12). Moreover, it is taught that the particles are to be carried by an inert substance such as polymers like chitin, chitosan, or rubber (see page 5; see instant claim 4).

7. Howse fails to teach the particles as being unmagnetized wherein those unmagnetized particles become magnetized in the presence of the insects magnetic field.

8. Saini teaches that unmagnetized ferromagnetic materials contain multiple domains with random magnetic directions which may become magnetized when present within a magnetic field (see 738, right column)..

9. Regardless, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the teachings of Howse with a reasonable expectation for success in arriving at a method of controlling pests with unmagnetized soft metals coated with a pesticide or behavior modifying chemical. While it's true that Howse requires magnetized particles, it would have been obvious to any person of ordinary skill that unmagnetized ferromagnetic metals are also capable of performing the exact same function. According to Howse, magnetic particles are capable of adhering to the cuticle of insects for prolonged periods of time without losing their effectiveness (see page 2). It's clear to the Examiner that insects possess at the very least a minor magnetic field. It would have readily occurred to any person of ordinary skill in the art, with knowledge of magnetism, that if preparing the same product but with unmagnetized ferromagnetic material, the exact same results would occur as the unmagnetized metal becomes polarized when exposed to the insects magnetic field and allow for the now magnetized particles to adhere to the surface of the insect. Salini is cited to support this notion. Saini teaches that unmagnetized ferromagnetic materials contain multiple domains with random magnetic directions, which is instantly the case. It's taught that such samples are easily magnetized when placed in an external magnetic field because the magnetic moments of each individual domain will orient parallel to the applied magnetic field. Moreover, the unmagnetized material will even magnetize to saturation when exposed to relatively weak external magnetic fields (see page 738, right column), such as present to insects. Therefore, it would not be a great leap for any person of ordinary skill in the art to modify the work of Howse such that the magnetic material is unmagnetized, only to become magnetized when exposed to the insects magnetic field. Therefore, the invention as a whole is *prima facie* obvious to one of ordinary skill in the art at the

time the invention was made, as evidenced by the references, especially in absence of evidence to the contrary.

10. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Howse et al. (WO 00/01236, published 01/13/2000), in view of Salini et al. (American J. Roentgenology, 1988, 150(4), 735-743) as applied to claims 1-4 and 6-20 above, and further in view of Westesen et al. (U 5885486, published 03/23/1999).

11. Howse does not teach the particles as being carried by a lipid such as a fatty acid.

12. Westesen cures this deficiency. It is taught that particles of lipids can be used as carriers for drugs, and other bioactive agents such as insecticides, fungicides and pesticides (see column 1, lines 10-15). Exemplified lipids include fatty acids and their esters (see column 9, lines 20-30; see instant claim 5).

13. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Howse and Westesen with a reasonable expectation for success in arriving at a method of controlling insects with an unmagnetized metal material coated with pesticides and behavior modifying agents wherein the particles are carried by fatty acids and esters thereof. One would have been motivated to use a fatty acid as a carrier as it's taught they are useful for aiding in solubilizing drugs such as insecticides, pesticides and fungicides without compromising the efficacy of the composition in its ability to attract and kill unwanted insects. Therefore, the invention as a whole is *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in absence of evidence to the contrary.

Conclusion

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kyle A. Purdy whose telephone number is 571-270-3504. The examiner can normally be reached from 9AM to 5PM.

15. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sharmila Landau, can be reached on 571-272-0614. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

16. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*/Kyle Purdy/
Examiner, Art Unit 1611
January 28, 2009*

*/David J Blanchard/
Primary Examiner, Art Unit 1643*